THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition No.2145 of 2007

% 20.02.2007

Between:

Eeda Ramaiah,
Nalgonda District and others

…Petitioners

And

The District Collector,
Nalgonda District and others.

…Respondents

! COUNSEL FOR Petitioners: Sri Ms.M.Vidyavathi

^ COUNSEL FOR RESPONDENTS: G.P.for Fisheries

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> Head Note:

? CITATIONS:

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JUDGMETN:

The Fishermen Co-operative Society, Garidepalli, was registered in the year 1981 under the A.P. Co-operative Societies Act, 1964 (for short '*the Act*'). Elections were held, to elect the Managing Committee, from time to time. A Committee, consisting of President, Secretary and seven Directors, was elected on 24-01-2002, for a term of five years. Petitioners were part of the said Committee. The term of the Committee expired on 23-01-2007. It is alleged that the President of the said Committee, the

4th respondent herein, did not take necessary steps for conducting elections for the succeeding term. They also stated that,
he admitted number of persons as members, without there being any resolution of the Managing Committee, or General Body.

The grievance of the petitioners is that respondents 1 to 3 are not taking any steps for conducting the elections by appointing a person, or persons-in-charge for the society, as contemplated under Section 32(7) of the Act.

Ms.M. Vidyavathi, learned counsel for the petitioners contends that, with the expiry of the term of an elected Committee,

a semblance of vacuum exists, and it becomes imperative for the 1st respondent to appoint person, or persons-in-charge, under
sub-section (7) of Section 32, so that it can facilitate the conducting of elections.

Learned Government Pleader for Fisheries, on the other hand,

had placed a copy of the proceedings dated 07-02-2007, issued by the 1st respondent, fixing the election schedule for the society.

He contends that it is always competent for the functional Registrar to direct conducting of elections, and that neither the Act, nor the Rules made thereunder, mandate that the elections must be conducted only through the persons-in-charge.

The facts, that gave rise to the filing of the writ petition, are not in dispute. The term of the elected Committee expired on 23-01-2007. The Act mandates that the elections to the Committee must be held before the expiry of the term of an existing committee. Basically, it is the duty of the out-going committee, to take necessary steps for conducting the elections. For one reason or the other, such elections could not be held. All the same, the 1st respondent swung into action and issued proceedings dated 07-02-2007, fixing the election schedule.

From the prayer in the writ petition and the pleadings in the affidavit, it becomes evident that the anxiety of the petitioners is to get elections to the society conducted, at the earliest. However, their demand is qualified, in the sense that the elections must be held through a person-in-charge, appointed under Section 32(7) of the Act. Therefore, it becomes necessary to examine as to whether existence of a person-in-charge is a condition precedent for holding elections.

Sub-section (7) of Section 32 empowers the Registrar to appoint a person, or persons-in-charge, to manage the affairs of a society. The relevant provision reads as under:

> **Sec.32(7)(a)**: "If there is no committee or in the opinion of the Government or, the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the Government, in respect of

> such class of societies as may be prescribed and the Registrar in all other cases may appoint a person or persons to manage the affairs of the society for a period not exceeding six months and the Government may, on their own and the Registrar with the previous approval of the Government, extend, from time to time, such period beyond six months, so however that the aggregate period include the extended period if any, shall not exceed [three years]".

Two conditions are stipulated in this provision, *viz.,* that there does not exist any committee, and that in the opinion of the Government, or the Registrar, it is not possible to hold elections to the committee. These two ideas are separated by the word "*or*". At the first blush, one gains an impression, that the word "*or*" functions as a disjunctive. However, on a close scrutiny, it becomes evident that these conditions must co-exist with each other, to enable the Government to appoint person-in-charge for a society.

That there does not exist any committee, when its term had expired, or when it is superceded; does not pose much of a problem for verification. If one examines the scheme under the Act, it can easily be perceived that administration and management of the affairs of the societies, through the elected committee, is a rule, and appointment of persons-in-charge is an exception. The emphasis is to ensure that the elected committees come into existence in succession. Rule 22 of the A.P. Co-operative Societies Rules, 1964 prescribes a detailed procedure for conducting elections to the societies. Rule 22(1)(a) obligates the existing committee to conduct elections before the expiry of its term. It is in this context, that before the Government, or the Registrar takes a decision to appoint a person-in-charge,
the possibility for conducting elections must be explored. It is only when such a possibility does not exist, that the exceptional step of appointing persons-in-charge, of a society, can be resorted to.

Therefore, the word “or” occurring in the beginning of Section 32(7)(a) of the Act is to be read as “*and*”, and the two conditions mentioned therein must exist concurrently, so as to enable the appointment of a person-in-charge. Conversely, if the holding of election becomes feasible, the question of appointing a person-in-charge does not arise.

It is difficult to accept the contention of the learned counsel for the petitioners that almost a semblance of vacuum occurs with the cessation of term of committee, unless a person-in-charge is appointed. The society, as a legal entity, comes into existence, on its being registered, and it ceases to exist with its winding up. The existence of the elected Managing Committee, or a person-in-charge, is only to facilitate management. Being the authority conferred with the general powers of superintendence, under Section 3 of the Act, the Registrar is competent to take various steps, including the one, to issue necessary directions for conducting of elections. Further, the person-in-charge, wherever appointed, cannot take an independent decision, for holding elections. He has to depend upon the necessary instructions issued by the Registrar. Viewed from any angle, the relief claimed by the petitioners cannot be granted.

The writ petition is accordingly dismissed. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.20-02-2007.

Note:
L.R. copy to be marked.
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